IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7682 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

USHAKANT LAXMANBHAI GAMIT

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. Against the award made by the Presiding Officer, 1st Labour Court, Surat in Reference (LCS) No.397 of 1985 on 29/10/1987, the employer, Gujarat State Road Transport Corporation, has preferred this petition.

2. Reference under section-10(1)(c) of the Industrial Disputes Act was preferred for decision wherein demand was made by the workman that he should be reinstated with back wages as his services were wrongly terminated. The respondent-workman came out with a case that he was discharging his duties as a Conductor with integrity and honesty since about 8 years and on 6/9/1982, by concocting a story, action was initiated. His statement was recorded; thereafter enquiry proceeded and as there was no possibility of settlement, reference was made. The employer pointed out that the workman, at the relevant time, was working as a conductor on Vyara-Una route. At the time of checking the bus, the Checking Squad found that the workman despite collecting amounts of fare from passengers had not issued tickets. After providing fair opportunity of hearing and following principles of natural justice, the decision in question was taken. It was pointed out that while arriving at the decision, all papers relating to the enquiry and his past service record were taken into consideration and misconduct having been proved, his services were terminated. It is required to be noted that the workman in the instant case, after proceedings commenced, submitted Purshis vide Exh. 8 before the Labour Court stating that he is not challenging the validity of the departmental enquiry and he submitted that the termination is challenged on the ground that the punishment is in excess in comparison to the default committed by him and thus, submitted before the Labour Court that the order of dismissal was not justified and lesser punishment in lieu of dismissal be awarded.

3. It is an admitted position that the workman collected amounts of fare from the passengers and did not issue the tickets. Default Card, Exh.13, was before the Labour Court. However, the Labour Court misread the Default Card and held that his past record is clean and as he is keen to forgo backwages and as he has remained unemployed in these hard days, ends of justice would met with if he is ordered to be taken back in service without backwages. The Presiding Officer, Labour Court, directed the employer to reinstate the petitioner accordingly with the scale which he was drawing on the date of the dismissal and that he should be given all benefits considering that he is continued in the service including the benefit of gratuity.

4. It is required to be noted that in all, 8 defaults were pointed out. Except in two cases, he was found indulging in misappropriation; in some cases, he was warned to be more careful in future and in some

cases, increments were stopped. As he did not improve despite these repeated misappropriations which could be detected, on the last occasion, i.e. on 9/9/1982, the order of dismissal came to be passed. It is required to be noted that the Checking Squad from Ahmedabad checked the bus and what they found has been noted in the Default Card also.

5. Thus, the Presiding Officer has misread the Default Card. The Presiding Officer ought to have realised that the workman indulged in past in misappropriation and despite the fact that warnings were given and in some manner, punishments were imposed on him, has not improved himself and therefore, there was no alternative for the employer but to take action. Therefore, in the facts and circumstances of the case, the Presiding Officer has come to the conclusion that the past record of the workman is clean and he is not involved in any misconduct though the record produced before the Labour Court indicates otherwise. The Presiding Officer has committed grave error while exercising powers under section-11A of the Industrial Disputes Act. Despite the decisions of this Court, the Labour Court is reinstating the Conductors on the same post so as to enable them to continue their misdeeds by misappropriation.

6. The decision in the case of Gujarat State Road Transport Corporation Vs Jamnadas Bechardbhai, reported in 1982 GLH 1057, was required to be considered by the Presiding Officer. The Court has pointed out that "Perhaps we should have anticipated a situation like the present and referred to misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them. If a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday, he has to collect fare and issue tickets. Reinstatement in the same post would therefore involve grave risk because of repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face. Perhaps he would be tempted to repair the past losses. Under the circumstances, when in a fit case the Labour Court reaches the conclusion that misappropriation by a bus conductor has been established (in view of the evidence showing that he had collected fare from the passengers but had not issued tickets though he had sufficient opportunity to do so in circumstances going to show that there was a dishonest intention), the Labour Court would have to think more than twice before

directing reinstatement in the same post as Conductor wherein he would be afforded the same opportunity or faced with the same temptation and the Corporation would be exposed to the same risk everyday. Be it realised that misappropriation by a bus conductor must be viewed with a degree of seriousness especially having regard to the fact that it would make successful working of a public Corporation impossible. In case misappropriation by a conductor is detected and he is found guilty, punishment must be deterrent to him as also to others, for misappropriation in such circumstances would be in relation to public moneys and the burden would fall on the shoulders of the common man. And be it realised that 80 percent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crouch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if 'everyone's' property (which it in fact is) is treated as 'no one's' property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self interest, sectional interest or class-interest. And therefore, the bus conductor, poor as he is, may have to suffer. We suffer more than him in having to say so, particularly, because big sharks never get caught. If they get caught they more often than not escape with impunity. But then merely because we cannot prevent the sharks escaping we cannot permit the fly to trifle with Public Property which is the poor men's collective property (if we envision for them a sun-lit day even on some distant morrow in the hidden future). Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the same, and robbed the National Exchequer, in the same post where he could re-indulge in the same weakness at public cost.

7. In the case of Gujarat State Road Transport Corporation Vs Kachraji Motiji Parmar, reported at 1993 (1) GLR 302, the Division Bench had an occasion to consider the similar situation. The Court pointed out that the observations made by the Bench in earlier decision in Special Civil Application No. 4556 of 1988 decided on 17/8/1989 wherein the Court has observed that "Ordinarily we think that the contention of Mr. Shelat is well founded that in cases of misappropriation the Labour Court would be slow in interfering with the order of dismissal from service because one cannot expect the employer to retain a person who has betrayed the tendency of misappropriating Corporation's funds while in service." In the case of Gujarat State Road Transport

Corporation Vs N.M. Desai, reported at 1985 GLH 446, the Court has held as under :

"Misappropriation, if held established would obviously be a major misconduct and unless a very strong case is made out to interfere with the punishment, the Labour Court would not be justified ordinarily in interfering with the discretion of the competent authority to deal with the delinquent concerned. To say that these are hard days for the people to find out jobs or to say that the Conductor is a man with a wife and children are the factor common to all cases, barring a few instances where the Conductor is unmarried or having no children. This can hardly be ground for any consideration. After all services with such public Corporations are not pasture-grounds always open for the people or they are not brought about for the purpose of furnishing employment to the unemployed in the society."

The Division Bench in the case of G.S.R.T.C. Vs K.M. Parmar (supra) also considered the decision reported in the case of Municipal Corporation of Ahmedabad Vs Husain Miya, 1986(2) GLR 1143. In that case, the Court observed that the power under section-11A of the Act can be exercised in a case where it is found on facts that dismissal or discharge of a workman is not justified, but in a case where no other order than the order of dismissal can be made on the proved facts, the arbitrary exercise of power under section-11A of the Act cannot be overlooked by this Court while exercising its jurisdiction under Article-227 of the Constitution. The Court pertinently observed as under :

"Ordinarily we would be slow in interfering with an order of reinstatement passed under section-11A of the Act by way of a substitute for an order of dismissal or discharge, but there are cases where such an arbitrary order cannot be countenanced because it tantamounts to an abuse of the discretionary jurisdiction conferred by Section-11A of the Act. In cases of gross misconduct such as the present one, the most appropriate punishment would be the termination of service and it would be mockery of justice to brand such an order as 'not justified' and substitute it by another order of the type made by the Labour Court. We are, therefore, of the

view that this petition must be allowed and the order passed by the Labour Court must be set aside."

8. The Apex Court in the case of State of Punjab & Ors. Vs. Ram Singh, Ex. Constable, reported at JT 1992(4) SC 253, pointed out as under :

"Take for instances the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates also records to conceal misappropriation. he only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct."

Thus, considering the aforesaid decisions, it is clear that under section-11A of the Industrial Disputes Act, the Industrial Tribunal or the Labour Court is not having unguided power to set aside the justified order passed by the management. The power under section-11A has to be exercised judicially and the Industrial Tribunal or Labour Court can interfere with the decision of the Management under section-11A of the act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Court in case of G.S.R.T.C. Vs. K.M. Parmar (supra) pointed out that this Court has repeatedly held that misappropriation, if held established, would be a major misconduct and normally, dismissal order passed by the competent authority should not be interfered with by the Labour Court or the Industrial Court under section-11A of the Industrial Dispute Act.

9. In the case of G.S.R.T.C. Vs Bhikhabhai Manjibhai, reported in 1996(2) GLH 693, the Counsel for the Corporation pointed out that with a view to give an opportunity to improve and to behave with honesty, opportunity was given to the workman conductor not once, but on more than one occasion.

10. In the instant case, we find that, to its credit, in all 7 defaults have been noted. Therefore, it cannot be said that the employer has not given sufficient

opportunity to the workman to improve. Chances for improvement and to behave with honesty were given, however, instead of improving and behaving with honesty, the workman continued his misconduct. It is required to be noted that the Corporation is plying large fleet of buses on various routes in the State of Gujarat and it is not possible for the Checking Squad to check each and every route everyday. It is only when some surprise checks are there, such misconduct is brought to the light and once a workman is found guilty, he should be visited with punishment of dismissal, especially, when there is repetition of the misconduct.

11. In the case of Gafar A. Gundigara Vs Gujarat State Road Transport Corporation, reported at 1999(1) GLH 909, workman preferred Special Civil Application before the learned Single Judge. In para-11 of the judgement, the Division Bench while hearing the appeal reproduced the observations made by the learned Single Judge which are as under :

> "Looking to the gravity of charge of misappropriation of funds by regularly correcting way-bills which has been accepted to be correct by the Tribunal, it does not stand to reason that any punishment less than dismissal from service could warrant, could be justified. It is required to be noted that the Labour Court came to the conclusion that the finding of the departmental inquiry was legal and proper."

The Court thereafter, held as under :

"The appellant was, therefore, held guilty of misappropriating public funds. In such a case, the Labour Court ought not to have interfered with the punishment which was awarded to him by the employer. The Labour Court lost sight of the employee's conduct and his past record. It overlooked the facts that even prior to the several instances mentioned in the record, the appellant misconducted himself on several occasions and was punished. In a case where an employee dealing with public funds is found misappropriating the funds of the Corporation on repeated occasions, it would be unwise to keep such a person in public employment."

The Court pointed out that it was not a case of momentary temptation or a solitary instance of indulging in misappropriating public funds. It was also pointed out that on account of unemployment, many persons are waitlisted with Employment Exchanges - many with higher

qualifications. Persons who are employed must think that they are better placed than others, i.e. those who are waiting in queue for employment. Such employed persons must bear in mind this aspect and when they are in government or in public sector, they should see that nothing is reflected against them for want of proper care or because of any misconduct. When an employee has miconducted himself then considering the nature of misconduct, orders must be passed. In that case, looking to the repeated acts reflected in the order and the default card, the Court expressed opinion that the impugned order made by the learned Single Judge was required to be confirmed stating that let others waiting in queue get the chance of serving as the person who was appointed has grossly misconducted himself.

12. In view of what is stated hereinabove, this petition must be allowed and accordingly, it is allowed. The order dated 29th October, 1987 made by the Presiding Officer, 1st Labour Court, Surat in Reference (LCS) No. 397 of 1985 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(B.C. Patel, J.)

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